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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JULIE GENGO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FRITO-LAY NORTH AMERICA, INC.,

Defendant.

Case No. **CV11-10322** SVW (FMG)

CLASS ACTION

COMPLAINT FOR:

- (1) Violation of California Business & Professions Code §§ 17500 *et seq.*;
- (2) Violation of California Business & Professions Code §§ 17200 *et seq.*;
- (3) Violation of California Civil Code §§ 1750 *et seq.*;
- (4) Breach of Express Warranty; and
- (5) Violation of Magnuson-Moss Act 15 U.S.C. §§ 2301 *et seq.*

DEMAND FOR JURY TRIAL

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1 Plaintiff Julie Gengo ("Plaintiff"), individually and on behalf of all others
 2 similarly situated, alleges the following upon personal knowledge as to her own
 3 acts and, as to all other allegations, upon information and belief, and investigation
 4 by counsel.

5 **NATURE OF ACTION AND SUMMARY OF ALLEGATIONS**

6 1. Plaintiff brings this class action on behalf of herself and a class of
 7 persons who purchased any of the following non-organic products sold under the
 8 Tostitos and SunChips brand names: Tostitos Restaurant Style Tortilla Chips,
 9 Tostitos Bite Size Rounds Tortilla Chips, Tostitos Crispy Rounds Tortilla Chips,
 10 Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos
 11 Restaurant Style with a Hint of Lime Tortilla Chips, Tostitos Artisan Recipes Fire-
 12 Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks,
 13 Sun Chips Garden Salsa Flavored Multigrain Snacks, Sun Chips French Onion
 14 Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain
 15 Snacks (collectively referred to herein as "Tostitos" and "SunChips").
 16 Advertisements and labels for the products are attached hereto as Exhibit A (Frito
 17 Lay, Naturally Delicious, [http://www.fritolay.com/your-health/naturally-](http://www.fritolay.com/your-health/naturally-delicious.html)
 18 [delicious.html](http://www.fritolay.com/your-health/naturally-delicious.html) (for advertisements, click on product hyperlink on bottom of the
 19 page; for labels, click on "See Nutrition Label" on bottom of advertisement pages)
 20 (last visited Dec. 8, 2011)).

21 2. Tostitos and SunChips are brands owned, developed, marketed, and
 22 sold by defendant Frito-Lay North America, Inc. ("Frito-Lay" or "Defendant").
 23 Frito-Lay is a wholly owned subsidiary of PepsiCo, Inc. ("PepsiCo").

24 3. Frito-Lay labels certain of its Tostitos and SunChips products as
 25 "made with ALL NATURAL ingredients." This representation is central to Frito-
 26 Lay's marketing of Tostitos and SunChips, and this label is displayed on the
 27
 28

1 product itself, the Frito-Lay website, and Tostitos's and SunChips's
2 advertisements.

3 4. But Tostitos and SunChips products are not made of "all natural"
4 ingredients. Each of the products that are the subject of this action contain corn and
5 vegetable oil as their main ingredients (based on weight). Corn and vegetable oils
6 constitute the first two ingredients listed on the nutritional label of each of the
7 products that are the subject of this action. In fact, Frito Lay boasts that some of
8 its Tostitos products are only made up of only three simple ingredients: corn, oil
9 and salt.

10 5. But the corn and vegetable oils (including corn, soybean, and canola
11 oils) are made from genetically modified plants and organisms ("GM" or "GMO").

12 6. Monsanto Company, a global agricultural company that pioneered
13 GM seeds, defines GMO on its website as food with its "*genetic makeup altered to*
14 *exhibit traits that are not naturally theirs*. In general, genes are taken (copied)
15 from one organism that shows a desired trait and transferred into the genetic code
16 of another organism." Monsanto, [http://www.monsanto.com/newsviews/Pages/](http://www.monsanto.com/newsviews/Pages/glossary.aspx#g)
17 [glossary.aspx#g](http://www.monsanto.com/newsviews/Pages/glossary.aspx#g) (last visited Dec. 8, 2011) (emphasis added). As more fully
18 alleged below, a recognized defining characteristic of genetically modified foods is
19 that they are *not* natural.

20 7. The reasonable consumer assumes that seeds created by swapping
21 genetic material across species to exhibit traits not naturally theirs are not "all
22 natural." Tostitos's and SunChips's advertising is very likely to deceive
23 consumers, and has deceived Plaintiff.

24 8. Plaintiff was damaged, in an amount to be determined at trial, because
25 she did not get the "all natural" Tostitos's and SunChips's products that were
26 advertised and that she paid for.

9. Defendant's violations of California and federal law through its wrongful conduct designed to mislead and deceive consumers into purchasing its product by labeling it as natural when it is made up of genetically modified ingredients specifically violate California false advertising and unfair competition laws, California Business & Professions Code § 17500 and § 17200, and the Consumers Legal Remedies Act (the "CLRA"), California Civil Code § 1750, constitute a breach of express warranty and violate the Magnuson-Moss Warranty Act 15 U.S.C. § 2301.

JURISDICTION AND VENUE

10. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332(d) because there are at least 100 Class Members in the proposed Class, the combined claims of proposed Class Members exceed \$5,000,000 exclusive of interest and costs, and at least one Class Member is a citizen of a state other than Defendant's state of citizenship. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because a federal question is involved of whether Defendant violated the Magnuson-Moss Act 15 U.S.C. § 2301.

11. Frito-Lay purposefully avails itself of the California consumer market and sells Tostitos and SunChips products in at least hundreds of locations within this District. Frito-Lay's Tostitos and SunChips products are sold at thousands of retail locations throughout California and purchased by thousands of consumers in California every day, including many in this District.

12. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims asserted occurred in this District, and Plaintiff dealt with Defendant, who is located in and/or does business in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant is subject to personal jurisdiction in California due to its substantial business in the state (and District), and otherwise purposely avails itself of the markets in

1 California and this District, through the promotion, sale, and marketing of its
2 products.

3 **THE PARTIES**

4 13. Plaintiff Julie Gengo is a consumer residing in Richmond, California.
5 For years Gengo regularly purchased Tostitos and SunChips products about once a
6 month for her own and her family's consumption, most recently in September
7 2011. Specifically since 2007, Gengo has purchased Tostitos Multigrain Tortilla
8 Chips, Tostitos Scoops Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted
9 Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips
10 French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar
11 Flavored Multigrain Snacks. During that period (2007 to the present), all of those
12 products contained the representation on their labels and in related advertising that
13 they were "made with All Natural ingredients." Plaintiff became aware of this
14 representation through Frito-Lay's advertising and labeling, which she was
15 exposed to about once a week by observing Frito-Lay's advertisements in print
16 media and retail stores and on the labels of the products themselves. She was also
17 exposed to that representation each time she looked at the label of one of the Frito-
18 Lay products she had at home. She purchased the products because she believed
19 and relied upon Defendant's representations on the product labels and
20 advertisements that the Tostitos and SunChips products she purchased were made
21 of all natural ingredients. Those representations remained the same throughout the
22 period 2007 to the present. Plaintiff would not have purchased those Tostitos and
23 SunChips products, but for Defendant's misleading statements about the product
24 being all natural. Plaintiff was injured in fact and lost money as a result of
25 Defendant's conduct of improperly describing Tostitos and SunChips products as
26 "natural." Plaintiff paid for an all natural product, but did not receive a product
27 that was all natural. Plaintiff received a product that was genetically engineered in
28

1 a laboratory, and had its genetic code artificially altered to exhibit not “natural”
2 qualities.

3 14. Defendant Frito-Lay is located in Plano, Texas. Frito-Lay markets
4 and distributes Tostitos and SunChips products.

5 FACTUAL ALLEGATIONS

6 Frito-Lay Advertises Tostitos and SunChips as “Made With ALL NATURAL 7 Ingredients”

8 15. Frito-Lay sells many snack products under the Tostitos and SunChips
9 brands. Certain non-organic Tostitos and SunChips products, including all the
10 products at issue here, are sold with a label on the front of the bag that states
11 prominently “made with ALL NATURAL ingredients.” Plaintiff purchased the
12 products that contained this representation.

13 16. In addition to the representation appearing on the product label, there
14 is a page called “Naturally Delicious” on Frito-Lay’s website under the “Your
15 Health” tab that describes what the “all natural” label means and lists Frito-Lay’s
16 products that feature this representation. The webpage states, in pertinent part:

17 We’re proud to make so many of the Frito-Lay snacks you love with
18 all natural ingredients. We believe that real flavor comes straight from
19 nature. From farm-fresh tomatoes to fragrant basil to slow-roasted
20 chipotle peppers, we make sure to use the best nature has to offer.
21 Why? Because our snacks go from our home to yours. And for us,
22 there's no better reason.

23 Natural FAQs

24 1. Q: What does it mean when a product is made with all natural
25 ingredients?

26 A: All Frito-Lay snack chips made with natural ingredients start with
27 *all-natural corn* or potatoes and *healthier oils*. For our flavored
28

1 LAY'S®, TOSTITOS® and SUNCHIPS® products, we are using all
2 natural seasonings that don't have artificial or synthetic ingredients.
3 This means these products don't contain any artificial flavors or
4 artificial preservatives, nor do they use monosodium glutamate
5 (MSG) or partially hydrogenated oil.

6 2. Q: *Why do we offer products made with all natural ingredients?*

7 A: *We know people are increasingly looking for snacks made with*
8 *natural ingredients. At Frito-Lay, we are proud to offer a wide*
9 *range of snack options that taste great and meet everyone's needs.*

10 3. Q: Will my favorite Frito-Lay snacks that are made with all natural
11 ingredients still taste as good?

12 A: Yes. We know you have come to expect great-tasting products
13 from us. In fact, many of the products you love have always been all
14 natural. We're proud to offer all natural ingredients in some of your
15 favorite brands and still deliver the great taste you love!

16 4. Q: Where can I find Frito-Lay products made with natural
17 ingredients?

18 A: *You can find all natural Frito-Lay products in the regular chip*
19 *aisle. To easily identify our products made with all natural*
20 *ingredients, look for the all natural stamp.*

21 5. Q: Which Frito-Lay products are now made with natural
22 ingredients?

23 A: Our original potato chips and tortilla chips have actually always
24 been all natural; they are made with just three simple ingredients—
25 potatoes or corn, oil and salt. Now many of your favorite flavored
26 products are made with natural ingredients, too, such as LAY'S®
27 Potato Chips, TOSTITOS® Tortilla Chips and SUNCHIPS®
28

1 Multigrain Snacks. For a full list of Frito-Lay natural products, please
2 see the list below.

3 Frito-Lay, <http://www.fritolay.com/your-health/naturally-delicious.html> (last
4 visited Dec. 8, 2011) (emphasis added).

5 17. The “made with ALL NATURAL ingredients” labeling is
6 prominently displayed on the Tostitos and SunChips bags and is featured on the
7 website as a key way to attract consumers to the Frito-Lay products, which Frito-
8 Lay acknowledges it is doing: “*we know people are increasingly looking for*
9 *snacks made with natural ingredients*” and “[t]o easily identify our products
10 *made with all natural ingredients, look for the all natural stamp.*” Frito-Lay,
11 <http://www.fritolay.com/your-health/naturally-delicious.html> (last visited Dec. 8,
12 2011) (emphasis added).

13 18. The claim that Tostitos and SunChips are “natural” is highly material
14 to the average consumer, which is why Frito-Lay places “made with ALL
15 NATURAL ingredients” on the front of its Tostitos and SunChips bags and
16 features it in advertisements.

17 **Tostitos and SunChips Are Made From Genetically Modified Organisms**

18 19. The Tostitos and SunChips products that are the subject of this action
19 are made of ingredients derived from plants (corn and vegetable oils) grown from
20 GMO seeds that are engineered to, among other things, allow for greater yield and
21 to be resistant to pesticides.

22 20. Frito-Lay clearly targets through its labeling of its Tostitos and
23 SunChips products as “made with ALL NATURAL ingredients” consumers
24 looking for truly natural foods, as it even admits on its website. Reasonable
25 consumers are told that Tostitos and SunChips are made of “all natural”
26 ingredients have no reason to demand products *without biotechnology ingredients*
27
28

1 because the “natural” designation represents to consumers that they are getting
2 biotech-free food.

3 **Genetically Modified Organisms Are Not “ALL NATURAL”**

4 21. Monsanto Company is one of the world’s biggest sellers of GMO
5 seeds and an avid GMO-proponent. On its website, Monsanto defines GMO as
6 follows:

7 Genetically Modified Organisms (GMO) – Plants or animals that have
8 had their *genetic makeup altered to exhibit traits that are not*
9 *naturally theirs*. In general, genes are taken (copied) from one
10 organism that shows a desired trait and transferred into the genetic
11 code of another organism.

12 Monsanto, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last
13 visited Dec. 8, 2011) (emphasis added).

14 22. The World Health Organization (“WHO”), which is the United
15 Nations’ directing and coordinating authority for health, defines GMO as follows:

16 Genetically modified organisms (GMOs) can be defined as organisms
17 in which *the genetic material (DNA) has been altered in a way that*
18 *does not occur naturally*. The technology is often called “modern
19 biotechnology” or “gene technology”, sometimes also “recombinant
20 DNA technology” or “genetic engineering”. It allows selected
21 individual genes to be transferred from one organism into another,
22 also between non-related species.

23 Such methods are used to create GM plants—which are then used to
24 grow GM food crops.

25 WHO, <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last
26 visited Dec. 8, 2011) (emphasis added).

23. Romer Labs, a company that provides diagnostic solutions to the agricultural industry, defines GMO as follows:

Agriculturally important plants are often genetically modified by the insertion of DNA material from outside the organism into the plant's DNA sequence, allowing the plant to *express novel traits that normally would not appear in nature*, such as herbicide or insect resistance. Seed harvested from GMO plants will also contain these [sic] modification.

Romer Labs, <http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html> (last visited Dec. 8, 2011) (emphasis added).

24. As demonstrated by the above definitions, genetically modified organisms are “created” artificially in a laboratory through genetic engineering. Tostitos and SunChips are not natural, much less “all natural.” Advertising Tostitos and SunChips as natural is deceptive and likely to mislead the public.

CLASS ALLEGATIONS

25. Plaintiff brings this action on her own behalf and as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following Class:

All persons in the United States who have purchased Tostitos Restaurant Style Tortilla Chips, Tostitos Bite Size Rounds Tortilla Chips, Tostitos Crispy Rounds Tortilla Chips, Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Restaurant Style with a Hint of Lime Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips Garden Salsa Flavored Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks from

1 December 12, 2007, through the final disposition of this and any and
2 all related actions (the "Class Period").

3 26. Plaintiff and the members of the Class are so numerous that joinder of
4 all members individually, in one action or otherwise, is impractical, based on
5 Defendant's national marketing and advertising campaigns that target consumers
6 across the country.

7 27. This action involves questions of law and fact common to Plaintiff
8 and all members of the Class, which include the following:

9 (a) Whether Defendant violated California Business & Professions
10 Code Section 17500;

11 (b) Whether Defendant violated California Business & Professions
12 Code Section 17200;

13 (c) Whether Defendant violated the CLRA, California Civil Code
14 Section 1750;

15 (d) Whether Defendant's conduct constituted a breach of express
16 warranty;

17 (e) Whether Defendant violated Magnuson-Moss Act 15 U.S.C.
18 § 2301; and

19 (f) Whether Plaintiff and Class Members sustained damages
20 resulting from Defendant's conduct and, if so, the proper measure of damages,
21 restitution, equitable, or other relief, and the amount and nature of such relief.

22 28. Plaintiff understands and is willing to undertake the responsibilities of
23 acting in a representative capacity on behalf of the proposed Class. Plaintiff will
24 fairly and adequately protect the interests of the Class and has no interests adverse
25 to, or which directly conflict with, the interests of the other members of the Class.

26 29. Plaintiff has engaged the services of counsel who are experienced in
27 complex class litigation, who will adequately prosecute this action, and who will
28

1 assert and protect the rights of and otherwise represent Plaintiff and the absent
2 Class Members.

3 30. Plaintiff's claims are typical of those of the absent Class Members
4 because Plaintiff and the Class Members each sustained damages arising from
5 Defendant's wrongful conduct, as alleged more fully herein.

6 31. This action is brought under Rule 23 because Defendant has acted on
7 grounds generally applicable to all members of the Class and/or because questions
8 of law or fact common to Class Members predominate over any questions affecting
9 only individual members.

10 32. Judicial determination of the common legal and factual issues
11 essential to this case would be far more efficient and economical as a class action
12 than piecemeal individual determinations.

13 33. Plaintiff knows of no difficulty that will be encountered in the
14 management of this litigation that would preclude maintenance as a class action.

15 **COUNT I**
16 **Violation of California Business & Professions Code §§ 17500 *et seq.***

17 34. Plaintiff incorporates the above allegations by reference as though
18 fully set forth herein.

19 35. Plaintiff brings this claim individually and on behalf of the Class.

20 36. Throughout the Class Period, Defendant engaged in a public
21 advertising and marketing campaign representing that Tostitos and SunChips are
22 "made with ALL NATURAL ingredients."

23 37. Tostitos and SunChips are in fact made from genetically modified
24 organisms that are not natural. Defendant's advertisements and marketing
25 representations are, therefore, misleading, untrue, and likely to deceive the public.
26
27
28

1 45. By engaging in the acts and practices described above, Defendant
 2 committed one or more acts of “unfair competition” within the meaning of
 3 Business & Professions Code § 17200. “Unfair competition” is defined to include
 4 any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive,
 5 untrue or misleading advertising and any act prohibited by [Business & Professions
 6 Code §§ 17500 *et seq.*].”

7 46. Defendant committed “unlawful” business acts or practices by, among
 8 other things, violating California Business & Professions Code § 17500.

9 47. Defendant committed “unfair” business acts or practices by, among
 10 other things:

11 (a) engaging in conduct where the utility of such conduct, if any, is
 12 outweighed by the gravity of the consequences to Plaintiff and Class Members;

13 (b) engaging in conduct that is immoral, unethical, oppressive,
 14 unscrupulous, or substantially injurious to Plaintiff and Class Members; and

15 (c) engaging in conduct that undermines or violates the spirit or
 16 intent of the consumer protection laws alleged in this Complaint.

17 48. Defendant committed “fraudulent” business acts or practices by,
 18 among other things, engaging in conduct Defendant knew or should have known
 19 was likely to and did deceive the public, including Plaintiff and other Class
 20 Members.

21 49. As detailed above, Defendant’s unlawful, unfair, and/or fraudulent
 22 practices include making false and/or misleading representations that Tostitos and
 23 SunChips were “made with ALL NATURAL ingredients.”

24 50. Plaintiff believed Defendant’s representation that Tostitos and
 25 SunChips were all natural. Plaintiff would not have purchased Tostitos and
 26 SunChips, but for Defendant’s misleading statements about the product being
 27 made with all natural ingredients. Plaintiff was injured in fact and lost money as a
 28

1 result of Defendant's conduct of improperly describing Tostitos and SunChips as
 2 "natural." Plaintiff paid for an all natural product, but did not receive a product
 3 that was all natural. Plaintiff received a product that was genetically engineered in
 4 a laboratory, and had its genetic code artificially altered to exhibit qualities that are
 5 not natural.

6 51. Plaintiff and Class Members seek declaratory relief, restitution for
 7 monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits,
 8 injunctive relief, and other relief allowable under California Business &
 9 Professions Code Section 17203, including, but not limited to, enjoining Defendant
 10 from continuing to engage in its unfair, unlawful and/or fraudulent conduct as
 11 alleged.

12 **COUNT III**
 13 **Violation of the California Consumers Legal Remedies Act –**
 14 **Cal. Civ. Code §§ 1750 *et seq.***

15 52. Plaintiff hereby incorporates by reference the allegations contained in
 16 all of the preceding paragraphs of this Complaint.

17 53. Plaintiff brings this claim individually and on behalf of the Class.

18 54. This cause of action is brought pursuant to the California Consumers
 19 Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the "CLRA"). This cause of
 20 action seeks monetary damages and injunctive relief pursuant to California Civil
 21 Code § 1782.

22 55. A demand letter was sent to Defendant prior to the filing of this
 23 Complaint.¹ Defendant did not correct the misrepresentations identified in the
 24 demand letter.

25
 26
 27 ¹ A copy of Plaintiff's notice and demand letter sent to Defendant is attached
 28 hereto as Exhibit B.

1 56. Defendant's actions, representations, and conduct have violated, and
2 continue to violate, the CLRA because they extend to transactions that are intended
3 to result, or that have resulted, in the sale of goods to consumers.

4 57. Plaintiff and all members of the Class are "consumers" as that term is
5 defined by the CLRA in California Civil Code § 1761(d).

6 58. Defendant sold to Plaintiff and other Class Members Tostitos and
7 SunChips products, which are "goods" within the meaning of California Civil
8 Code § 1761(a).

9 59. By engaging in the actions, misrepresentations, and misconduct set
10 forth in this Class Action Complaint, Defendant violated, and continues to violate,
11 Civil Code § 1770(a)(5) by misrepresenting that Tostitos and SunChips are natural
12 and have particular qualities that they do not have, namely, that they are all natural
13 when they are not.

14 60. By engaging in the actions, misrepresentations, and misconduct set
15 forth in this Complaint, Defendant violated, and continues to violate, Civil Code
16 § 1770(a)(9), by advertising Tostitos and SunChips with intent not to sell it as
17 advertised.

18 61. By engaging in the actions, misrepresentations, and misconduct set
19 forth in this Complaint, Defendant violated, and continues to violate, § 1770(a)(16)
20 by misrepresenting that a subject of a transaction has been supplied in accordance
21 with a previous representation when it has not.

22 62. Defendant violated the CLRA by representing through its
23 advertisements Tostitos and SunChips as described above when they knew, or
24 should have known, that the representations and advertisements were
25 unsubstantiated, false, and misleading.

26 63. Plaintiff believed Defendant's representation that Tostitos and
27 SunChips were all natural. Plaintiff would not have purchased Tostitos and
28

1 SunChips, but for Defendant's misleading statements about the products being all
2 natural. Plaintiff was injured in fact and lost money as a result of Defendant's
3 conduct of improperly describing Tostitos and SunChips as "natural." Plaintiff
4 paid for an all natural product but did not receive a product that was all natural.
5 Plaintiff received a product that was genetically engineered in a laboratory, and
6 had its genetic code artificially altered to exhibit qualities that are not natural.

7 64. Plaintiff requests that this Court enjoin Defendant from continuing to
8 employ the unlawful methods, acts, and practices alleged herein pursuant to
9 California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging
10 in these types of practices in the future, Plaintiff and the Class will continue to
11 suffer harm.

12 **COUNT IV**
13 **Breach of Express Warranty**

14 65. Plaintiff incorporates the above allegations by reference as though
15 fully set forth herein.

16 66. Plaintiff brings this claim individually and on behalf of the Class.

17 67. Plaintiff, and each member of the Class, formed a contract with
18 Defendant at the time Plaintiff and the other Class Members purchased Tostitos
19 and SunChips. The terms of that contract include the promises and affirmations of
20 fact made by Defendant on Tostitos's and SunChips's packaging and through
21 marketing and advertising, as described above. This marketing and advertising
22 constitute express warranties and became part of the basis of the bargain, and are
23 part of the standardized contract between Plaintiff and the members of the Class
24 and Defendant.

25 68. Defendant purports through its advertising to create express
26 warranties of Tostitos and SunChips as natural by making the affirmation of fact,
27 and promising, that Tostitos and SunChips are "All Natural."
28

69. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class, when they purchased the product and used it as directed.

70. Despite express warranties about the "All Natural" nature of Tostitos and SunChips, they are composed of GMOs and are, in fact, not as they are found in nature.

71. Defendant breached express warranties about Tostitos and SunChips and their qualities, because the product does not conform to Defendant's affirmations and promises to be natural and provide such benefits described above.

72. As a result of Defendant's breach of express warranty, Plaintiff and the Class were harmed in the amount of the purchase price of Tostitos and SunChips.

COUNT V
Violation of Magnuson-Moss Act (15 U.S.C. §§ 2301 *et seq.*)

73. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

74. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

75. Defendant is supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

76. Tostitos and SunChips are consumer products as defined in 15 U.S.C. § 2301(6).

77. By reason of Defendant's breach of its implied warranties and express written warranties stating that Tostitos and SunChips are "all natural," but in fact they are composed of GMOs and are not as they are found in nature, Defendant has violated the statutory rights due the Plaintiff and the Class pursuant to the

1 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging
2 Plaintiff and the Class.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself and all others similarly
5 situated, pray for judgment against Defendant as follows:

6 A. An order certifying this case as a class action and appointing Plaintiff
7 and her counsel to represent the Class Members;

8 B. An order declaring that the acts and practices of Defendant constitute
9 violations of California Business & Professions Code §§ 17500 and §§ 17200 *et*
10 *seq.*, and California Civil Code §§ 1750 *et seq.*, and constitute breaches of express
11 warranties;

12 C. For damages pursuant to California law in an amount to be
13 determined at trial, including interest, pursuant to the CLRA;

14 D. For damages pursuant to the Magnuson-Moss Warranty Act, 15
15 U.S.C. §§2301 *et seq.*;

16 E. For restitution for monies wrongfully obtained and/or disgorgement of
17 ill-gotten revenues and/or profits;

18 F. A permanent injunction enjoining Defendant from continuing to harm
19 Plaintiff and the members of the Class and from violating California law;

20 G. An order requiring Defendant to adopt and enforce a policy that
21 requires removal of misleading natural claims, which complies with California
22 law;

23 H. Reasonable attorneys' fees and the costs of the suit; and

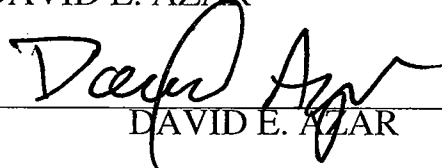
24 I. Such other relief as this Court may deem just and proper.
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: December 14, 2011

MILBERG LLP
JEFF S. WESTERMAN
DAVID E. AZAR



DAVID E. AZAR

One California Plaza
300 S. Grand Avenue, Suite 3900
Los Angeles, CA 90071
Telephone: (213) 617-1200
Facsimile: (213) 617-1975
Email: jwesterman@milberg.com

Attorneys for Plaintiff Julie Gengo

EXHIBIT A

TOSTITOS® Restaurant Style Tortilla Chips

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Search 

TOSTITOS® Restaurant Style Tortilla Chips

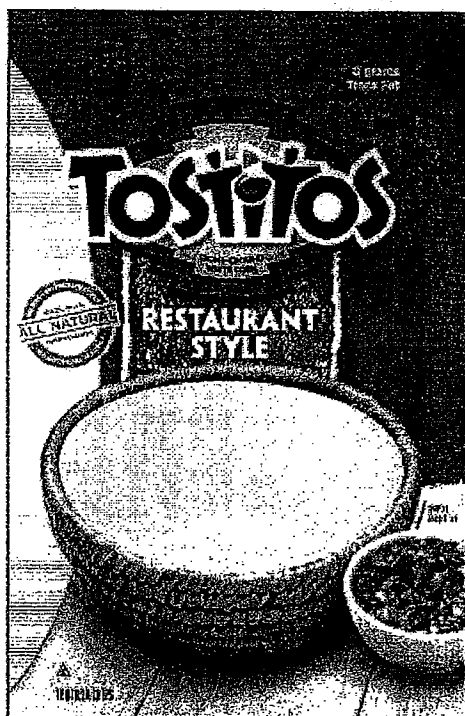


Like 49

 SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.
No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 7 chips)

Amount Per Serving

Calories 140 **Calories from Fat 60**

% Daily Value*

Total Fat 7g **10%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 115mg **5%**

Total Carbohydrate 19g **6%**

Dietary Fiber 2g **7%**

Sugars 0g

Protein 2g

Vitamin A 0% • Vitamin C 0%

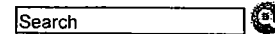
Calcium 2% • Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories:	2,000	2,500
Total Fat	Less than		65g	80g
Sat Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4



TOSTITOS® Bite Size Rounds Tortilla Chips

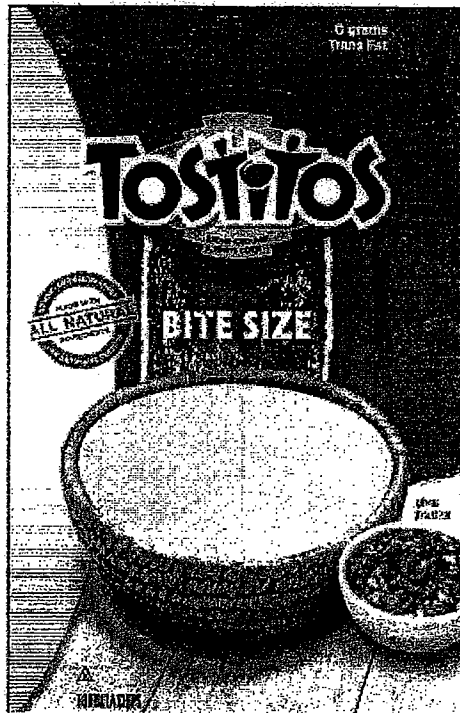


Like 37

SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.
No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 24 chips)

Amount Per Serving

Calories 140 **Calories from Fat 70**

% Daily Value*

Total Fat 7g **11%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 110mg **5%**

Total Carbohydrate 18g **6%**

Dietary Fiber 2g **7%**

Sugars 0g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 2%

Vitamin E 4% • Thiamin 2%

Niacin 2% • Vitamin Bs 4%

Phosphorus 4% • Magnesium 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories:	2,000	2,500
Total Fat	Less than		65g	80g
Sat Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g


Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

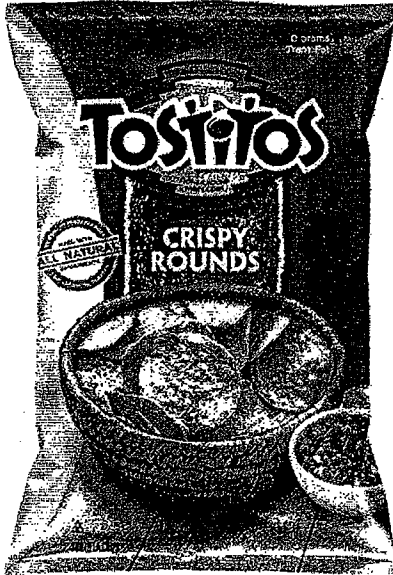
TOSTITOS® Crispy Rounds Tortilla Chips

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Search 

TOSTITOS® Crispy Rounds Tortilla Chips

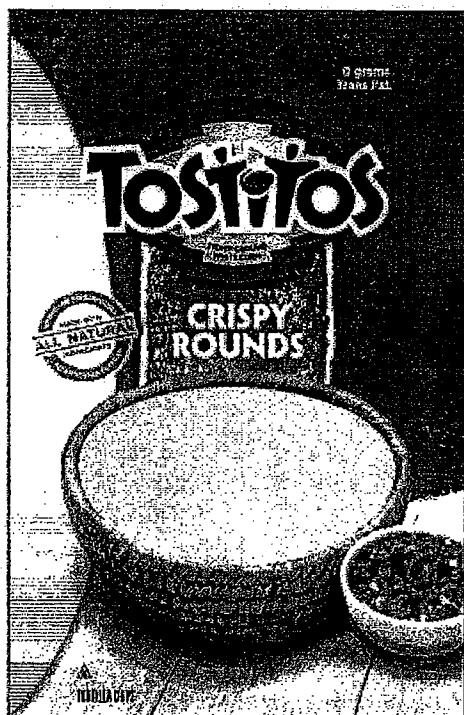


Like 20

 SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.
No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 13 chips)

Amount Per Serving

Calories 140 **Calories from Fat 70**

% Daily Value*

Total Fat 7g **11%**

Saturated Fat 1g **6%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 120mg **5%**

Total Carbohydrate 18g **6%**

Dietary Fiber 2g **7%**

Sugars 0g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 4% • Iron 2%

Vitamin E 4% • Niacin 2%

Vitamin B₆ 4% • Phosphorus 6%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories:	2,000	2,500
Total Fat	Less than		65g	80g
Sat Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

TOSTITOS® Multigrain Tortilla Chips

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Search 

TOSTITOS® Multigrain Tortilla Chips

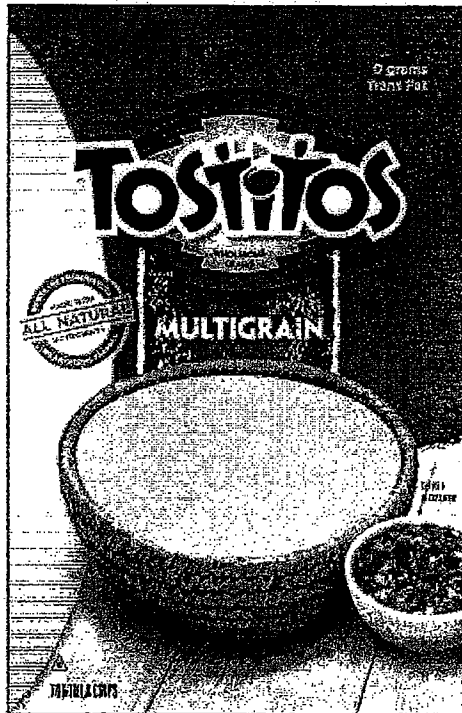


Like 79

 SHARE THIS PAGE

- 0g Trans Fat
- Additive Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole Corn, Vegetable Oil (Corn, Soybean, Canola, and/or Sunflower Oil), Corn Starch, Whole Buckwheat Flour, Whole Oat Flour, Sugar, Toasted Corn Germ, Whole Wheat Flour, and Salt. **CONTAINS WHEAT INGREDIENTS.**

Nutrition Facts

Serving Size 1 oz (28g/About 8 chips)

Amount Per Serving

Calories 150 **Calories from Fat 70**

% Daily Value*

Total Fat 7g **11%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 110mg **5%**

Total Carbohydrate 19g **6%**

Dietary Fiber 2g **7%**

Sugars less than 1g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 2%

Thiamin 2% • Vitamin B₆ 2%

Phosphorus 4% • Magnesium 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories:	2,000	2,500
Total Fat	Less than		65g	80g
Sat Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g


Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

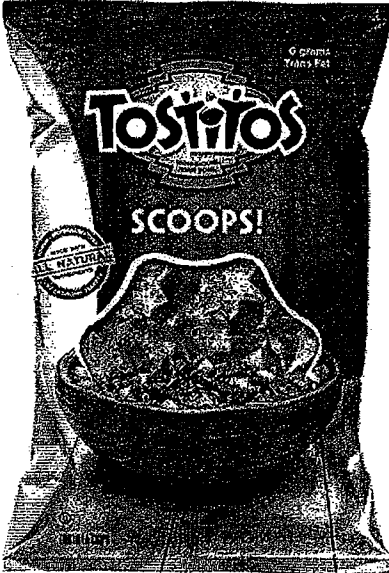
TOSTITOS® SCOOPS!® Tortilla Chips

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Search 

TOSTITOS® SCOOPS!® Tortilla Chips



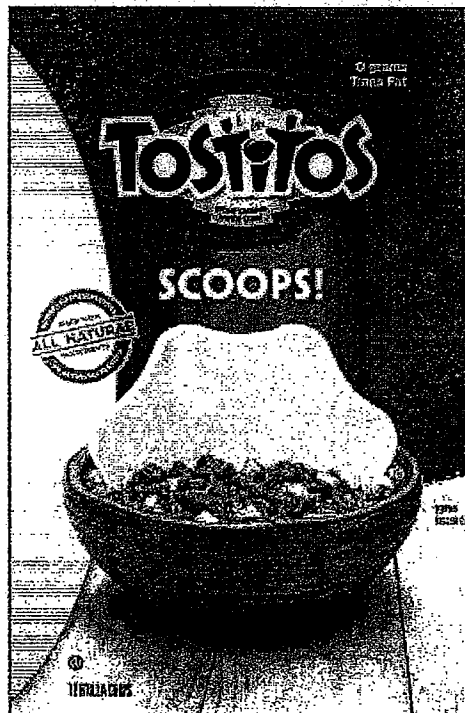
Like 109



SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher OU
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.

No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 12 chips)

Amount Per Serving

Calories 140 **Calories from Fat** 60

% Daily Value*

Total Fat 7g **11%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 120mg **5%**

Total Carbohydrate 19g **6%**

Dietary Fiber 2g **7%**

Sugars 0g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 0%

Vitamin E 4% • Thiamin 2%

Riboflavin 2% • Vitamin B6 4%

Phosphorus 6% • Magnesium 4%

Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4



TOSTITOS® Restaurant Style with a Hint of Lime Tortilla Chips



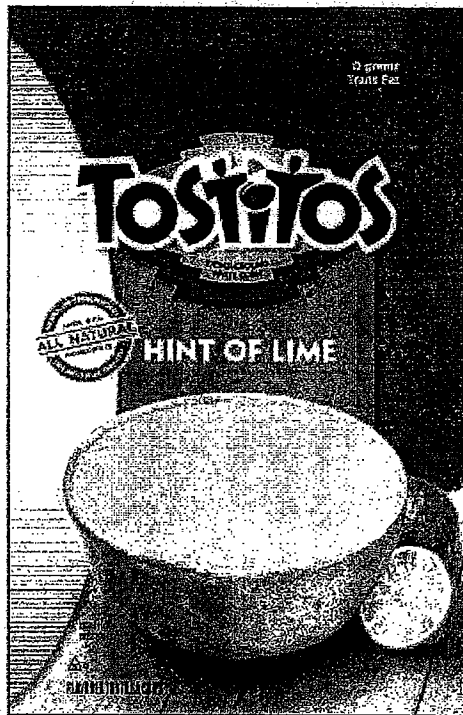
Like 233



SHARE THIS PAGE

- 0g Trans Fat
- No Gluten Ingredients
- Kosher Triangle K
- MSG Free
- Onion Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), Maltodextrin (Made From Corn), Salt, Sugar, Natural Flavors (including Natural Lime Flavor), Corn Sugar, Sour Cream (Cultured Cream, Nonfat Milk), Corn Bran, Whey, Spice, and Yeast Extract.

CONTAINS MILK INGREDIENTS.

No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 6 chips)

Amount Per Serving

Calories 150 **Calories from Fat 70**

% Daily Value*

Total Fat 7g **11%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 125mg **5%**

Total Carbohydrate 18g **6%**

Dietary Fiber 2g **7%**

Sugars less than 1g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories:	2,000	2,500
Total Fat	Less than		65g	80g
Sat Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4




Search 

TOSTITOS® ARTISAN RECIPES® Fire-Roasted Chipotle Tortilla Chips

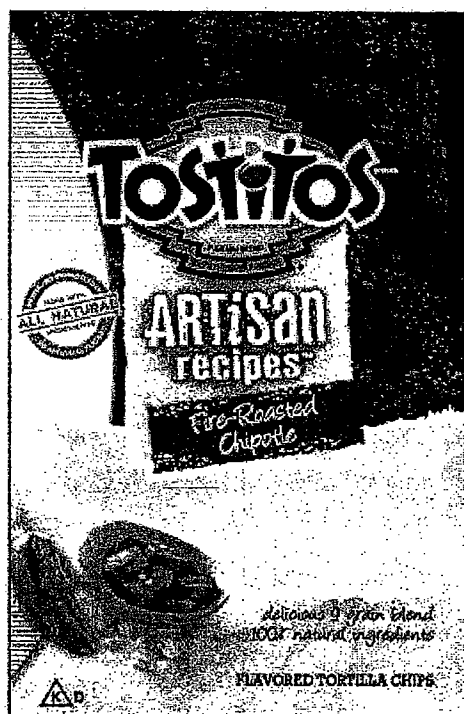


Like 417

 SHARE THIS PAGE

- 0g Trans Fat
- Kosher Triangle K
- MSG Free
- Pig (Porcine) Free

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), Corn Starch, Maltodextrin (Made From Corn), Dried Pinto Beans, Whole White Wheat, Whole Triticale, Whole Oats, Whole Rye, Whole Barley, Spices (Including Chipotle Chili Pepper), Whole Millet, Whole Buckwheat, Salt, Whole Brown Rice, Sugar, Onion Powder, Natural Flavors (Contains Milk), Yeast Extract, and Garlic Powder.

CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 8 chips)

Amount Per Serving

Calories 140 **Calories from Fat 70**

% Daily Value*

Total Fat 7g **11%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 3g

Monounsaturated Fat 2g

Cholesterol 0mg **0%**

Sodium 90mg **4%**

Total Carbohydrate 18g **6%**

Dietary Fiber 2g **9%**

Sugars less than 1g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 2%

Thiamin 2% • Riboflavin 2%

Niacin 2% • Vitamin B6 2%

Phosphorus 6% • Magnesium 6%

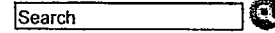
Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

		Calories:	2,000	2,500
Total Fat	Less than		65g	80g
Sat Fat	Less than		20g	25g
Cholesterol	Less than		300mg	300mg
Sodium	Less than		2,400mg	2,400mg
Total Carbohydrate			300g	375g
Dietary Fiber			25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4



SUNCHIPS® Original Flavored Multigrain Snacks



Like 35 SHARE THIS PAGE

- 0g Trans Fat
- Additive Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free
- Soy Free
- 18g of Whole Grain

© 2011 FRITO-LAY NORTH AMERICA, INC.



Ingredients: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Salt, Natural Flavor, and Maltodextrin (Made from Corn).
CONTAINS A WHEAT INGREDIENT.

No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 16 chips)

Amount Per Serving

Calories 140 **Calories from Fat 50**

% Daily Value*

Total Fat 6g **10%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 1g

Monounsaturated Fat 3.5g

Cholesterol 0mg **0%**

Sodium 120mg **5%**

Total Carbohydrate 19g **6%**

Dietary Fiber 3g **10%**

Sugars 2g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 0% • Iron 2%

Vitamin E 6% • Thiamin 2%

Niacin 2% • Vitamin B₆ 2%

Phosphorus 4% • Magnesium 4%

Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

SUNCHIPS® Garden Salsa Flavored Multigrain Snacks

Page 1 of 2



Search 

SUNCHIPS® Garden Salsa Flavored Multigrain Snacks



Like 46  SHARE THIS PAGE

- 0g Trans Fat
- MSG Free
- Pig (Porcine) Free
- Soy Free
- 18g of Whole Grain

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Tomato Powder, Salt, Natural Flavors, Maltodextrin (Made From Corn), Cheddar Cheese (Milk, Cheese Cultures, Salt, Enzymes), Dextrose, Buttermilk, Onion Powder, Whey, Yeast Extract, Romano Cheese (Part Skim Cow's Milk, Cheese Cultures, Salt, Enzymes), Whey Protein Concentrate, Corn Oil, Spices (Including Jalapeño Pepper), Citric Acid, Paprika Extracts, and Lactic Acid.

CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 15 chips)

Amount Per Serving

Calories 140 **Calories from Fat 60**

% Daily Value*

Total Fat 6g **9%**

Saturated Fat 1g **5%**

Trans Fat 0g

Polyunsaturated Fat 1.5g

Monounsaturated Fat 3.5g

Cholesterol 0mg **0%**

Sodium 140mg **6%**

Potassium 70mg **2%**

Total Carbohydrate 19g **6%**

Dietary Fiber 3g **10%**

Sugars 2g

Protein 2g

Vitamin A 0% • **Vitamin C 0%**

Calcium 0% • **Iron 2%**

Vitamin E 6% • **Thiamin 2%**

Riboflavin 2% • **Niacin 2%**

Vitamin B₆ 4% • **Phosphorus 6%**

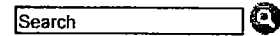
Magnesium 4% • **Zinc 2%**

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4



SUNCHIPS® French Onion Flavored Multigrain Snacks

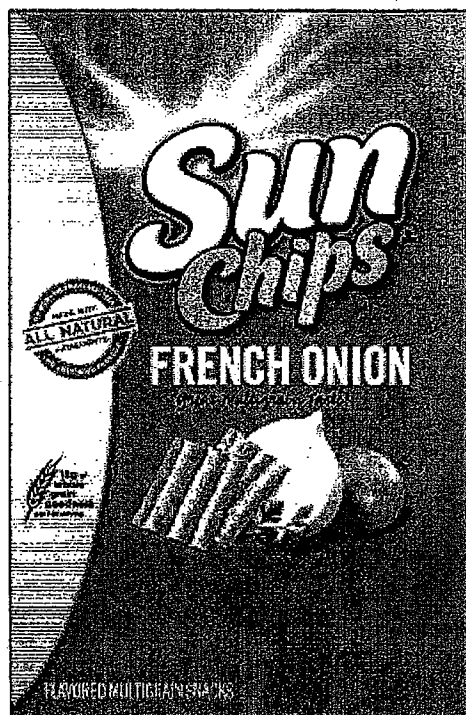


Like 39

 SHARE THIS PAGE

- 0g Trans Fat
- MSG Free
- Pig (Porcine) Free
- 18g of Whole Grain

© 2011 FRITO-LAY NORTH AMERICA, INC.



INGREDIENTS: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Whey Protein Concentrate, Salt, Buttermilk, Whey, Onion Powder, Sour Cream (Cream, Skim Milk, Cultures), Natural Flavors, Gum Acacia, Skim Milk, Mozzarella Cheese (Milk, Cheese Cultures, Salt, Enzymes), Yeast Extract, Spices (Including Parsley), and Maltodextrin (Made From Corn).
CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 15 chips)

Amount Per Serving

Calories 140 **Calories from Fat** 60

% Daily Value*

Total Fat 6g **10%**
Saturated Fat 1g **5%**
Trans Fat 0g
Polyunsaturated Fat 1g
Monounsaturated Fat 3.5g

Cholesterol 0mg **0%**

Sodium 150mg **6%**

Potassium 75mg **2%**

Total Carbohydrate 18g **6%**

Dietary Fiber 3g **10%**

Sugars 3g

Protein 2g

Vitamin A 0% • **Vitamin C** 0%

Calcium 0% • **Iron** 2%

Vitamin E 6% • **Thiamin** 2%

Niacin 2% • **Vitamin B₆** 4%

Phosphorus 6% • **Magnesium** 4%

Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4




Search 

SUNCHIPS® HARVEST CHEDDAR® Flavored Multigrain Snacks



Like 46

 SHARE THIS PAGE

- 0g Trans Fat
- MSG Free
- Pig (Porcine) Free
- Soy Free
- 18g of Whole Grain

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INGREDIENTS: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Maltodextrin (Made From Corn), Salt, Cheddar Cheese (Milk, Cheese Cultures, Salt, Enzymes), Natural Flavors, Whey, Whey Protein Concentrate, Onion Powder, Romano Cheese (Cow's Milk, Cheese Cultures, Salt, Enzymes), Buttermilk, Yeast Extract, Citric Acid, Paprika Extracts, Lactic Acid, Garlic Powder, Parmesan Cheese (Milk, Cheese Cultures, Salt, Enzymes), and Skim Milk.

CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 15 chips)

Amount Per Serving

Calories 140 **Calories from Fat 60**

% Daily Value*

Total Fat 6g **10%**

Saturated Fat 1g **4%**

Trans Fat 0g

Polyunsaturated Fat 1g

Monounsaturated Fat 3.5g

Cholesterol 0mg **0%**

Sodium 200mg **8%**

Potassium 70mg **2%**

Total Carbohydrate 19g **6%**

Dietary Fiber 3g **10%**

Sugars 2g

Protein 2g

Vitamin A 0% • Vitamin C 0%

Calcium 0% • Iron 2%

Vitamin E 6% • Thiamin 2%

Riboflavin 2% • Niacin 2%

Vitamin B₆ 4% • Phosphorus 8%

Magnesium 4% • Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

EXHIBIT B



MILBERG LLP

NEW YORK
LOS ANGELES
TAMPA
DETROIT

Andrei Rado
Telephone: 212-594-5300
arado@milberg.com

October 14, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frito Lay North America, Inc.
ATTN: General Counsel/Legal
7701 Legacy Drive
Plano, TX 75024

PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577

Re: Demand for Action Pursuant to California Civil Code § 1782

To Whom It May Concern:

We represent a purchaser of Frito-Lay North America, Inc.'s ("Frito-Lay") Tostitos and Sun Chips products. Our client purchased Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks. Our client is a resident of California. This letter serves as notice and demand for corrective action by Frito-Lay and its parent Company PepsiCo, Inc. ("PepsiCo") pursuant to Consumers Legal Remedies Act, California Civil Code § 1782 ("CLRA"). We hereby demand on behalf of our client and other consumers that you immediately discontinue the false and misleading advertising and marketing of Tostitos and Sun Chips as "natural" and "made with all natural ingredients" and that you return the money you received as a result of your wrongful conduct to the purchasers of Tostitos and Sun Chips products.

Frito Lay markets and advertises certain of its non-organic products, Tostitos Restaurant Style Tortilla Chips, Tostitos Bite Size Rounds Tortilla Chips, Tostitos Crispy Rounds Tortilla Chips, Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Restaurant Style with a Hint of Lime Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips Garden Salsa Flavored

One Pennsylvania Plaza - New York, NY 10119 - T 212.594.5300 - F 212.868.1229 - milberg.com



October 14, 2011
Page 2

Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks as "All Natural." The term "natural" conveys to reasonable consumers that these products are made of natural ingredients. However, these products are not "100% natural," but instead are made from genetically modified plants ("GM") or genetically modified organisms ("GMO"). Our client and others purchased Tostitos and Sun Chips products, unaware of the fact that the representations about its natural ingredients were not truthful.

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and/or fraudulent acts or practices, undertaken by Frito-Lay with the intent to result in the sale of Tostitos and Sun Chips products to the consuming public.

Frito-Lay's practices involving its marketing, advertising and sale of Tostitos and Sun Chips constitute violations of the CLRA § 1750 *et seq.* Specifically, Frito-Lay's practices violate CLRA § 1770(a) under, *inter alia*, as described with respect to the following subdivisions:

(9) advertising Tostitos and Sun Chips products with intent not to sell it as advertised;
and


(16) misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

Frito-Lay's practices also violate California Business & Professions Code § 17200 and § 17500 *et seq.* and constitute a breach of warranty.

Pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that Frito-Lay immediately correct and rectify these violations by ceasing the misleading marketing and advertising campaign for Tostitos and Sun Chips products, and initiating a corrective advertising campaign to re-educate consumers regarding the truth about Tostitos and Sun Chips products. In addition, Frito-Lay must offer to refund the purchase price of all Tostitos and Sun Chips products, plus provide reimbursement for interest.

We await your response.

Sincerely,

Andrei V. Rado 

Andrei V. Rado
MILBERG LLP

MILBERG LLP

October 14, 2011
Page 3

cc:

MILBERG LLP

Jessica J. Sleater

One Pennsylvania Plaza

New York, New York 10119

MILBERG LLP

Jeff S. Westerman

One California Plaza

300 S. Grand Avenue, Suite 3900

Los Angeles, CA 90071

MILBERG LLP

9846 4078 2002 8104 4486
7010 0290 0002 8104 4486

U.S. Postal Service	
CERTIFIED MAILTM RECEIPT	
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For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ <u>\$1.20</u> <u>NEW YORK 0028</u>
Certified Fee	\$ <u>\$2.85</u> <u>10001-9999</u>
Return Receipt Fee (Endorsement Required)	\$ <u>\$0.00</u> <u>09</u>
Restricted Delivery Fee (Endorsement Required)	\$ <u>\$0.00</u>
Total Postage & Fees	\$ <u>\$5.21</u> <u>SPS10/14/2011</u>
Sent To Frito Lay North America, Inc. Street, Apt. No., or PO Box No. Attn: General Counsel/Legal 7701 Legacy Drive City, State, ZIP+4 Plano, TX 75204	
PS Form 3800, August 2005 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address here: _____</p>	
<p>1. Article Addressed to:</p> <p>PepsiCo, Inc. 700 Anderson Hill Road Purchase, NY 10577</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from serial)</p> <p>7010 0290 0002 8104 4493</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

7010 0290 0002 8104 4493

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CERTIFIED MAIL [®] RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 1.00
Certified Fee	\$2.85
Return Receipt Fee (Endorsement Required)	\$2.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.85
<p>Sent To: PepsiCo, Inc.</p> <p>Street, Apt. No. or PO Box No.: 700 Anderson Hill Road</p> <p>City, State, ZIP+4: Purchase, NY 10577</p>	
PS Form 3800, August 2006 See Reverse for Instructions	

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Additional information for this item is stored in files offline. You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed within four hours. This information will remain online for 30 days.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is Fernando M. Olguin.

The case number on all documents filed with the Court should read as follows:

CV11- 10322 SVW (FMOx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

MILBERG LLP

JEFF S. WESTERMAN (SBN 94559)

DAVID E. AZAR (SBN 218319)

300 S. Grand Ave., # 3900, Los Angeles, CA 90071

Tel: (213) 617-1200 Facs: (213) 617-1975

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIAJULIE GENGO, individually and on behalf of all
others similarly situated,

PLAINTIFF(S)

v.

FRITO-LAY NORTH AMERICA, INC.,

DEFENDANT(S).

CASE NUMBER

CV1110322 SW (FMQ)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jeff S. Westerman, whose address is Milberg LLP, 300 S. Grand Avenue, Suite 3900, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: DEC 14 2011By: SHEA BOURGEOIS

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> JULIE GENGO, individually and on behalf of all others similarly situated,	DEFENDANTS FRITO-LAY NORTH AMERICA, INC.,																								
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) MILBERG LLP, JEFF S. WESTERMAN and DAVID E. AZAR 300 S. Grand Avenue, Suite 3900, Los Angeles, CA 90071 Telephone: (213) 617-1200 Facsimile: (213) 617-1975	Attorneys (If Known) GIBSON, DUNN & CRUTCHER, ANDREW S. TULUMELLO 1050 Connecticut Avenue, N.W., Washington, DC 20036-5306 Telephone: (202) 955-8657 Facsimile: (202) 530-9678																								
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%"><tr><td></td><td style="text-align: center;">PTF</td><td style="text-align: center;">DEF</td><td></td><td style="text-align: center;">PTF</td><td style="text-align: center;">DEF</td></tr><tr><td>Citizen of This State</td><td style="text-align: center;"><input checked="" type="checkbox"/> 1</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in This State</td><td style="text-align: center;"><input type="checkbox"/> 4</td><td style="text-align: center;"><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td style="text-align: center;"><input type="checkbox"/> 5</td><td style="text-align: center;"><input checked="" type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td>Foreign Nation</td><td style="text-align: center;"><input type="checkbox"/> 6</td><td style="text-align: center;"><input type="checkbox"/> 6</td></tr></table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																									
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ TBD																									
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Violation of Cal Bus & Prof Code §§17500 et seq. and 17200 et seq., Cal Civ Code §1750 et seq., Breach of Express Warranty, and 15 U.S.C. §2301 et seq.																									
VII. 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CV1110322

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Contra Costa

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Texas

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	Contra Costa and generally throughout the state

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date December 14, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))